

REMARKS

Applicant respectfully requests expedited handling of this reissue application in accordance with 37 C.F.R. § 1.176(a). This reissue has been pending since August 13, 1999. Reissue applications are to be treated with special dispatch as the foregoing regulation and MPEP section indicates. *See* 37 C.F.R. § 1.176(a) and MPEP §§ 1441-42.

Applicant understands that the prior Supplement Amendment filed May 3, 2005 was favorably received and placed the application in condition for allowance. In light of the long pendency of the application, Applicant's representative reviewed the application and submits herewith claim amendments to more clearly describe aspects of the invention consistent with the embodiments disclosed in the specification and avoid potentially unintended disclaimer due to changes in law that occurred since certain claim amendments were made, as discussed in more detail below.

The current status of the claims is as follows. Claims 1-16, which are original claims based on the patent, previously have been allowed and no amendments to these claims have been made. Some of the new claims 17-45 added during this reissue have been amended, primarily to replace claim language added by prior amendments to overcome a prior rejection under 35 U.S.C. § 112, second paragraph, which was not well-founded and could lead to unintended surrender of subject matter due to new case law that arose long after the amendments were agreed upon and made by Applicant. Claims 24, 26, 41, and 43-45 fall into this category. Other claims, such as new claim 33, have been amended to more clearly define the claimed subject matter. One new independent claim 46 has been added to claim the subject matter of claim 24 in a somewhat different manner, but which is fully supported by the specification, as discussed below. New claims 47-66 are dependent upon claim 46 and, except for claims 47-51, generally

track the language of previously submitted dependent claims, such as claims 26-40. Finally, new dependent claims 67-76 have been added to depend from and claim further aspects of the invention defined in original claim 13, and claim 77 has been added to depend from claim 24. Accordingly, claims 1-77 are now pending in this application. All of the newly added claims are fully supported by the specification and drawings, and no new matter issues are raised.

All of the new claims are presented herein in proper format in accordance with 37 C.F.R. § 1.173 and MPEP § 1453, which requires amended new claims to be completely underlined. See MPEP at 1400-68. Applicant has also submitted herewith a listing of all new claims in compliance with the requirements under 37 C.F.R. § 1.173(b)(2) and (d), which require all changes to be shown relative to the patent.

Turning to the primary reason that prompted this Supplemental Amendment, in the Office Action mailed February 28, 2000 (Paper No. 6), the Examiner rejected claims 24-40 under 35 U.S.C. § 112, second paragraph as allegedly being indefinite for failing to point out and distinctly claim the subject matter which the Applicant regards as the invention. The Examiner stated on page 2 that "it is not clear how the panel 'extends upwardly and outwardly from said bottom thereof.'" In its June 19, 2000 response, Applicant originally amended claims 24 and 41 (which also recited the feature) to recite "said first panel extends at an obtuse angle with respect to the vertical." Now, however, Applicant traverses the rejection for at least the following reasons.

Applicant originally amended these claims to expedite prosecution at a time prior to the Supreme Court's decision in *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 535 U.S. 722, 122 S.Ct. 1831 (2002). Those cases and their progeny now indicate that such amendments may result in unintended surrender of subject matter. Upon review of the record it

is clear that the objected to portion of the claim is broad, not indefinite in anyway, and uses nearly identical language as claim 13 in the original patent (U.S. Patent No. 6,657,600 (“’600 patent”), which has been allowed and has never been rejected under § 112 in the original or re-issue prosecution. Further, it appears that the amendment requiring that “said first panel extends at an obtuse angle with respect to the vertical,” arguably could be interpreted as a disclaimer of subject matter to which Applicant is entitled, including a preferred embodiment disclosed in the specification and in FIGS. 8 and 9 in which the outer surface of the panel includes two vertical portions at part 244 and 246, as well as an intermediate portion at part 248 that “is profiled to join lower part 244 to thicker upper part 246.” *See* col. 6: 8-10. Accordingly, Applicant has amended and added new claims to clearly obviate such an erroneous argument.

In particular, Applicant amended independent claims 24 and 41 to correspond with claim 13, which has been allowed in this reissue application. Claim 13 recites “said one panel is profiled to extend outwardly and upwardly from said bottom thereof to said top thereof.” Neither the original nor any of the reissue Examiners rejected this claim feature on the basis of § 112, second paragraph. Accordingly, Applicant amended claims 24 and 41 herein to recite “said outer surface of said first panel is profiled to extend outwardly and upwardly from said bottom thereof to said top thereof to define a supporting shelf.” These amendments comply with the requirements of 37 C.F.R. § 1.173(c) and are supported by at least original claim 13 and FIGS. 8 and 9. Moreover, these amendments make the language closer to the language originally used in these claims, which mirrored the language of claim 13 from the issued ‘600 patent. Therefore, Applicant respectfully submits that claims 24 and 41 fully comply with the requirements of 35 U.S.C. § 112, second paragraph and are in condition for allowance.

In claim 26, the feature of “an obtuse angle from said bottom thereof to said top thereof” has been deleted. This feature has now been included in new claim 77, which recites “said outer surface of said first panel comprises a portion extending at an obtuse angle relative to the vertical.” As can be seen in FIGS. 8 and 9, the outer surfaces of bottom part 244 and top part 246 are preferably vertical, while the outer surface of intermediate 248 part is profiled (at an obtuse angle) to join bottom part 244 and top part 246. *See* col. 6: 5-10. New claim 77 clearly encompasses the embodiment illustrated in at least FIGS. 8 and 9, and eliminates any potential ambiguity or inadvertent disclaimer. Moreover, it is clear that claim language requiring the outer surface to be “profiled to extend outwardly and upwardly from said bottom thereof to said top thereof to define a supporting shelf” may encompass one or more surfaces in vertical, or other, orientation. Thus, Applicant respectfully submits that dependent claims 26 and 77 are in condition for allowance.

Claims 43-45 have been amended to more clearly define the invention and encompass the subject matter Applicant is entitled to by virtue of the disclosure of the written description and drawings. Thus, claim 43 now recites that “a portion of the outer surface of said first panel extends at an obtuse angle with respect to the bottom portion” to form a supporting shelf. Applicant respectfully submits this amendment is clearly supported by at least FIGS. 8 and 9 of the specification. Independent claims 44-45 recite similar language but do not specifically require the angle to be obtuse. These claims recite that the panel “comprises a portion extending at an angle relative to the vertical to define a supporting shelf.” Accordingly, these amendments do not constitute new matter and claims 43-45 are clearly definite and allowable over the prior art of record.

Furthermore, new independent claim 46 has been added by this amendment to claim this supporting shelf feature in a somewhat different, but equally supported matter. Claim 46 recites that “said first insulating foam panel includes a first part having a first width and a second part having a second width, said second width being greater than said first width to define a supporting shelf.” Pursuant to 37 C.F.R. § 1.173(c), Applicant respectfully submits that this new claim is clear supported by the disclosure at, for example, column 6, lines 5-7, describing an embodiment shown in FIGS. 8 to 10, which reads “[a] top part 246 of panel 212 is substantially thicker than bottom part 244.” The disclosure also states, for example, at column 5, lines 50-51, that the embodiment provides “an integral brick shelf 200.” Applicant has added this claim to encompass the differing thicknesses of a panel defining a brick shelf that is clearly described in the specification. These claims are definite, patentable over the prior art, and do not attempt to recapture subject matter surrendered during original prosecution. Allowance of claim 46, and newly added claims 47-66 dependent thereon and which, except for claims 47-51, generally track the language of previously submitted dependent claims 26-40, is respectfully requested.

Finally, claims 67-76, which depend from original allowable claim 13, have also been added by this amendment. Claims 67-68 have been added to more clearly define the feature of the “bridging members extending between and through” the foam panels. More specifically, claim 67 further defines the subject of claim 13 by specifically requiring the bridging members to extend through “both the inner and outer surfaces of said other one of said panels,” while claim 68, which generally tracks the language of previously submitted dependent claim 33, further defines that “one of said end plates of each bridging member abuts the outer surface of said other panel.” As clearly shown in FIGS. 8-10, the bridging members 242 extend through at least the inner surfaces 218 and 230 of the panels 212 and 214. But the bridging member may

also extend completely through panel 214 so that it may abut its outer surface 232, as shown in FIG.8 and described at various places throughout the specification. As a result, pursuant to 37 C.F.R. § 1.173(c), claims 67 and 68 are clearly supported by the specification. Therefore, Applicant respectfully submits that claims 67 and 68 are in condition for allowance by virtue of their dependency from allowable claim 13, as well as for reciting additional patentably distinct features.

Claims 69-76 are also dependent upon independent claim 13 and generally track the language of previously submitted dependent claims 28-31, 36, and 38-40. These claims also are in condition for allowance.

Accordingly, Applicant submits that claims 1-77 are now in condition for allowance. Because of the substantial delays in the prosecution of this application, Applicant respectfully requests that Examiner expedite consideration of this amendment so that it may pass into issue in a timely manner.

Applicant maintains that a supplemental declaration is not required because the error in the originally submitted reissue inventor's declaration remains applicable to all the claims in the reissue application. *Cf.* MPEP § 1411 at page 1400-54. Accordingly, a supplemental declaration is not being filed herewith. If the Examiner believes a supplemental declaration is required, Applicant respectfully requests the Examiner explain the basis and defer the requirement until after allowance of this application.

CONCLUSION

In view of the foregoing amendments and remarks, this application is believed to be in condition for allowance, and prompt notification thereof is respectfully solicited. If there are any issues outstanding after consideration of this response that would prevent allowance, it is requested that the Examiner contact Applicant's undersigned representative at the number below to expedite prosecution.

Applicant believes that no extensions of time are required at this time. If extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned for under 37 C.F.R. § 1.136(a). Any fees required for extensions of time and any fees for the net addition of claims are hereby authorized to be charged to our Deposit Account No. 23-1951.

Respectfully submitted,



Richard S. Meyer
Reg. No. 32,451

Date: November 1, 2005

MCGUIREWOODS LLP
1750 Tysons Boulevard
Suite 1800
McLean, VA 22102-4215
Tel: 703.712.5135
Fax: 703.712.5296